

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

COMMONWEALTH SCIENTIFIC AND  
INDUSTRIAL RESEARCH  
ORGANISATION,

Plaintiff,

v.

CISCO SYSTEMS, INC.

Defendant.

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Case No. 6:11-cv-343 (LED)

**JURY TRIAL REQUESTED**

**STIPULATED ORDER OF DISMISSAL AND DAMAGES TRIAL**

Having reviewed the parties' Joint Motion for Entry of Stipulated Order of Dismissal and Damages Trial ("Joint Motion") and for good cause having been shown, the Court hereby Orders as follows:

(1) Pursuant to Fed. R. Civ. P. 41(a)(2):

- a. CSIRO's claim for willful infringement against Cisco is hereby dismissed with prejudice and CSIRO's First, Second and Third Affirmative Defenses in its Reply to Amended Counterclaims by Defendant Cisco Systems, Inc. are dismissed without prejudice; and
- b. Cisco's counterclaims and Cisco's First, Second, Third, Fifth, Seventh, Ninth, Twelfth and Thirteenth Affirmative Defenses are hereby dismissed without prejudice;

all the foregoing dismissals being subject to the terms of the parties' agreement as set forth in the Joint Motion.

(2) The Court hereby orders that the jury trial currently scheduled for February 10, 2014 shall only be on the measure of damages and issues related thereto but not issues of liability

(together “Damages Issues”), with the remaining issues, including all liability issues, being resolved according to the terms agreed by the parties in the Joint Motion.

(3) With respect to the damages trial, the parties further stipulate to and the Court hereby orders the following:

- a. Within two weeks of the entry of this Order, the parties are to identify the claims that will be presented to the jury or, if agreement on the number of claims cannot be reached, the parties shall submit letter briefs of five pages or less setting forth their positions on which and how many claims should be submitted to the jury.
- b. The scope of accused products that will be the subject of CSIRO’s claims for damages at trial include all products that practice any of the IEEE 802.11(a), (g), draft-(n), (n), draft-(ac) or (ac) standards and that have been made, used, sold or offered for sale in the United States, or imported into the United States, by or on behalf of Cisco or its subsidiaries during the six-year statute of limitations period, as extended by any tolling agreement of the parties that may exist and that do not incorporate a “Licensed Wi-Fi chip”, as that term is defined in the Joint Motion, and subject to the conditions and Cisco’s reservation of rights set forth in the Joint Motion.
- c. The parties shall refrain from arguing issues that relate solely to liability to the jury, and the Court shall inform the jury in a neutral manner that it is not the jury’s role to resolve liability, but only to determine the measure of damages to compensate CSIRO for Cisco’s infringement of the ‘069 Patent. Furthermore, the parties shall work together to propose to the Court preliminary and final jury charges, a verdict form, and any other instructions provided to the jury, as necessary, that are crafted to

implement the Joint Motion, but to the extent that an agreement cannot be reached with respect to specific proposals, the parties may make competing proposals to the Court with respect to the contested issues.

- d. The evidence offered at trial shall be limited to evidence that is relevant to determine the Damages Issues, but not issues of liability; and although such evidence may include evidence relating to the '069 Patent, the scope of the claims, and state of the art, among other things, the parties shall not offer liability-related evidence (or any other evidence) or argument for the sole and improper purpose of biasing the jury.
- e. Pursuant to a subsequent order of this Court, a motion hearing shall be set to address all pre-trial motions, including summary judgment, *Daubert* and evidentiary motions related to damages. That hearing shall be set prior to the final pretrial conference.

(4) Pursuant to the parties' stipulation and agreement, any remaining liability issues shall be resolved according to the terms proposed in the parties' Joint Motion and the Court then will enter a Final Judgment consistent with the parties' agreement.

**So ORDERED and SIGNED this 19th day of March, 2013.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**